



MICHIGAN INDIGENT DEFENSE COMMISSION

Michigan Indigent Defense Commission Meeting Minutes
200 N. Washington Square, 3rd Floor
Lansing, MI 48933
June 18, 2019
Time: 11:00 am

Commission Members Present

Michael Puerner, Chair, Kimberly Buddin, Tracey Brame, Judge Thomas Boyd, Nathaniel Crampton, Andrew DeLeeuw, Frank Eaman, Judge James Fisher, Christine Green, Joseph Haveman, James Krizan, Margaret McAvoy, John Shea, Gary Walker

Participating via Telephone

Nancy Diehl, Tom McMillin and William Swor

Commission Members Absent

Thomas Clement and Judge Jeffrey Collins

Members of the Public Participating Included:

Malcolm Brown (via telephone), Russell Church, Chris Dennie, Tim Havis, Mary Ann Jerge (via telephone), Meghann Keit, Brian Kennedy, Karen Moore, Craig Paull, Courtney Pendleton, Scott Smith, Sara Spencer-Noggle, Marianne Talon (via telephone), Dawn Van Hoek, Shelli Weisberg

Staff Members Present

Loren Khogali, Barbara Klimaszewski, Marla McCowan, Kelly McDoniel, Rebecca Mack, Susan Prentice-Sao, Jonah Siegel, Nicole Smithson, Kristen Staley, Melissa Wangler and Marcela Westrate

Chair Puerner called the Michigan Indigent Defense Commission (“MIDC” or “the Commission”) meeting to order at 11:02 am.

Members of the Commission introduced themselves. Ms. Khogali introduced herself and asked each staff member to introduce themselves.

Public Comment

Christopher Dennie, Kent County Public Defender, offered public comment.

Additions to the Agenda

Judge Boyd requested that a report from the Nominating Committee be added to the agenda.

Chair Puerner requested that agenda item 8f, Defense Counsel in Specialty Courts, be moved ahead of agenda item 8e, FY 20 Compliance Plans.

Judge Fisher moved that the agenda be adopted as amended. Mr. Walker seconded the motion. The motion carried.

Consent Agenda

Mr. Shea moved that page two of the April minutes be amended by adding “after the commission vacancies are filled” at the end of the third paragraph on page 2. Mr. Swor moved that the minutes be adopted as amended. Mr. Walker seconded the motion. The motion carried.

Chair Report

Chair Puerner summarized his meeting with Department of Licensing and Regulatory Affairs Director Orlene Hawks. MIDC staff met with a group of stakeholder systems from the Michigan Association of Counties to discuss the grant agreement for the next fiscal year. Those meetings will continue. Chair Puerner has appointed new Commissioners to MIDC Committees. Commissioners were asked to let Chair Puerner know if they would prefer a different committee assignment.

Executive Director Report

Ms. Khogali provided submitted a written report and invited questions from Commissioners. She welcomed new Commissioners. She welcomed the new Regional Manager for Western Michigan, Susan Prentice-Sao.

Standard 8 Proposed Technical Amendment

Ms. Khogali presented a proposed technical amendment for the Commission’s consideration. Standard 8 currently references “The rates paid by the Michigan Attorney General for Special Assistant Attorneys General” as guidance for reasonable salaries. The rates for “Special Assistant Attorneys General” are not public, are based on individual contracts that vary greatly and are not standard from contract to contract. This matter was discussed by the Commission’s committees on Standards 6 and 8. The Commission’s discussion indicated that the reference to the Assistant Attorneys General compensation should be read as a permissible range rather than a salary scale.

The amendment would strike the word “Special” and the revised Standard 8 language would read as follows:

“A. Rates of Payment for Salaried Public Defenders. Reasonable salaries and benefits and resources should be provided to indigent defense counsel. The rates paid by the Michigan Attorney General for Special Assistant Attorneys General, or other state offices serve as guidance for reasonable compensation.”

Judge Fisher moved that the technical amendment be adopted, and that the change be communicated to Director Hawks at LARA. Mr. Haveman seconded the motion. After discussion, the motion carried.

MIDC Transition to DTMB/State of Michigan Network

Ms. Khogali updated the Commission on the work being done to move MIDC staff to the State’s Executive Branch technology services.

Incomplete Contracts

There are two contracts outstanding, Washtenaw County and 36th District Court/City of Detroit. Ms. Staley updated the Commission on Washtenaw County's status. Ms. McDoniel updated the Commission on the 36th District Court in Detroit's status.

Budget Adjustments

Commissioners were provided a summary of the budget adjustments approved by Grant Manager Rebecca Mack. Ms. Mack answered questions from Commissioners.

Budget adjustments were approved for the following systems:

- Barry County
- Cheboygan County
- Chippewa County
- Clinton County
- D 19 – Dearborn
- D 25 – Lincoln Park
- D 28 – Southgate
- D 29 – City of Wayne
- D 40 – St. Clair Shores
- D 43-2 – Ferndale
- D 48 – Bloomfield
- D 51 – Waterford
- D 61- Grand Rapids
- D 62A - Wyoming
- Eaton County
- Monroe County
- Huron County
- Lake County
- Marquette County
- Mason County
- Ogemaw County
- Ontonagon County
- Presque Isle County
- Saginaw County
- St. Joseph County
- Tuscola County

The following budget adjustment requests were denied by the Grant Manager:

- Baraga, Houghton, Keweenaw Counties
- Cass County

Requests for Plan Adjustments

Ms. McCowan provided an overview of the plan change requested by St. Joseph County. The County is requesting a plan revision to include a Managed Assigned Counsel administrator beginning July 1, 2019. Staff recommends approval of the change.

Judge Boyd moved that the Commission approve the compliance plan adjustment requested by St. Joseph County. Mr. Walker seconded the motion. The motion carried.

Implementation Update

Dr. Siegel presented a rubric developed by staff to determine whether a system was compliant. He discussed the need for the document in evaluating compliance in the field. Commissioners were invited to present feedback by June 25, 2019.

Failure to Submit Quarterly Reports and Incomplete Submissions

Ms. Khogali and Ms. Mack updated the Commission on the financial status reports received as of the first two quarters.

Judge Boyd moved that the Commission authorize staff to withhold 25% from any system that is not in compliance with the reporting requirements. Mr. Haveman seconded the motion. After discussion, the motion carried with Commissioners DeLeeuw, Krizan and McAvoy voting nay.

Wayne County Update

Commissioners reviewed a written updated provided by Wayne County. Ms. Van Hoek answered questions from Commissioners. Judge Boyd expressed his appreciation for Ms. Van Hoek's work in Wayne County. Ms. Talon requested that the Commission consider extending the county's grant agreement beyond the September 30 deadline.

The Commission recessed from 1:00 pm until 1:20 pm.

Court Rules Committee Report and Recommendation

Ms. Khogali presented proposed court rule changes to make the rules consistent with the MIDC Act. Commissioners were asked to give any comments to Ms. Westrate by June 28. After that date, Ms. Khogali will work with Mr. Clement to finalize the drafts of the rules.

Defense Counsel in Specialty Courts

Judge Boyd moved that the Commission:

- (1) declare all indigent criminal defendants equal and deserving of the protections afforded by the MIDC Act and the MIDC,
- (2) specifically declare the representation of indigent criminal defendants in treatment court is an allowable expense that will be treated the same as all other allowable expenses, and
- (3) allow each and every local system that has already submitted a plan and/or cost analysis by the date of the passage of this resolution to submit a supplement to that plan and/or cost analysis to add expenses related to representation of indigent defendants in treatment courts within 60 days. The MIDC will consider these additions for plans and cost analysis whether the system's plan and/or cost analysis has been approved or not.

Judge Fisher seconded the motion.

The Commission discussed the motion. Judge Boyd indicated that Mr. Clement, who did not attend the meeting, supports the motion.

Chair Puerner called for a roll call vote. The motion failed 7 yeas – 10 nays. Yeas: Chair Puerner, Judge Boyd, Mr. Crampton, Judge Fisher, Ms. Green, Ms. McAvoy and Mr. McMillin. Nays: Ms. Buddin, Ms. Brame, Mr. DeLeeuw, Ms. Diehl, Mr. Eaman, Mr. Haveman, Mr. Krizan, Mr. Shea, Mr. Swor and Mr. Walker.

Judge Boyd moved that the Commission:

- (1) declare all indigent criminal defendants equal and deserving of the protections afforded by the MIDC Act and the MIDC, and
- (2) specifically declare the representation of indigent criminal defendants in treatment court is an allowable expense that will be treated the same as all other allowable expenses.

Mr. Eaman seconded the motion. The motion carried.

FY20 Compliance Plans

Ms. Mack presented an overview of the issue of cost allocations and proposed policy drafted by staff members. The Commission discussed the proposed policy.

Mr. DeLeeuw moved that plans including indirect costs under 10% of personnel be allowable and that plans over this amount be subject to additional scrutiny. Mr. Eaman seconded the motion. The motion carried.

Chair Puerner reminded members that, as the Commission begins considering plans for FY 20, Commissioners should recuse themselves when considering their employer's system.

The Commission's ad hoc committees met prior to the Commission to review plans.

The Construction Committee, chaired by Ms. Diehl, met Friday June 14, 2019 at 3:00 pm. It reviewed plans from the following systems:

- Barry County
- Hillsdale County
- Kalkaska County

The Committee for Systems requesting over \$1 million in grant funding, Mr. Puerner Chair, met Monday June 17, 2019 at 8:00 am. The following plans were reviewed:

- Kalamazoo County
- Eaton County

The Committee on District Court funding units requesting over \$500,000 in grant funding met June 17, 2019 at 9:30 am. It reviewed the following plans:

- D 40 – St. Clair Shores (Macomb County)
- D 41-a-2 – Shelby Township (Macomb County)
- D 43-2 – Ferndale (Oakland County)
- D 46 – Southfield (Oakland County)

The Committee on Ancillary Spending met June 17, 2019 at 3:00 pm. It reviewed the following plans:

- Alger County
- Cass County
- Charlevoix County
- D 19 - Dearborn

- D41-a-2 – Shelby Township
- D41b – Mt. Clemens
- D43-2 - Ferndale
- D47 – Farmington/Farmington Hills
- D51 - Waterford
- D62A - Wyoming
- D62b - Kentwood
- Delta County
- Dickinson County
- Emmet County
- Gogebic County
- Gratiot County
- Grosse Pointe Park
- Hillsdale County
- Iron County
- Kalamazoo County
- Kalkaska County
- Lake County
- Mackinac County
- Otsego County
- Presque Isle County

Substantive Review for Commission Decisions

Staff recommends that the Commission approve the plans and disapprove the cost analyses for the following systems:

- Baraga, Houghton and Keweenaw Counties;
- Barry County
- D 41-a-2 – Shelby Township (Macomb County)
- D 62B -Kentwood (Kent County)
- Grosse Point Park Municipal Court (Wayne County)
- Lake County.

Ms. Green moved that the staff recommendation be adopted and the plans for the above systems be approved, and the cost analyses be disapproved. Mr. Krizan seconded the motion. The motion carried.

Staff recommends that the plans and cost analyses from the following systems in the Northern Michigan region be approved:

- Alger County
- Antrim County
- Charlevoix County
- Chippewa County
- Crawford County
- Delta County
- Dickinson County
- Emmet County
- Gogebic County
- Grand Traverse County
- Iron County
- Kalkaska County
- Luce County
- Mackinac County
- Menominee County
- Ontonagon County
- Otsego County
- Presque Isle County

Ms. McCowan and Ms. Wangler provided an overview of the plans.

Mr. Haveman moved that the staff recommendation be adopted and that the plans and cost analyses for the above systems be approved. Mr. Shea seconded the motion. The motion carried.

Staff recommends that the plans and the cost analyses for the following systems in the South Central region be approved:

- Clinton County
- Eaton County
- Gratiot County
- Hillsdale County
- Monroe County
- Shiawassee County

Ms. McCowan and Ms. Staley provided an overview of the plans and answered questions from Commissioners.

Judge Fisher moved that the Eaton County plan be tabled, and that the remaining plans and cost analyses from the systems listed above be approved. Judge Boyd seconded the motion. The motion carried.

The Eaton County plan and cost analysis will be included for consideration on the Commission's July meeting agenda.

Staff recommends that the plans and cost analyses for the following systems in Wayne County be approved:

- D19 – Dearborn
- D20 – Dearborn Heights
- D21 – Garden City
- Grosse Pointe City

Ms. McCowan and Ms. McDoniel provided an overview of the plans and answered questions from Commissioners.

Mr. Haveman moved that the staff recommendation be adopted and the plans and the cost analyses for the systems listed above be approved. Ms. Green seconded the motion. The motion carried.

Staff recommends that the plans and cost analyses for the following systems in the Lapeer/Macomb/Oakland/St. Clair region be approved:

- D40 – St. Clair Shores
- D41-a-1 - Sterling Heights
- D41b – Mt. Clemens
- D43-2 – Ferndale
- D46 – Southfield
- D47 – Farmington/Farmington Hills
- D48 – Bloomfield
- D51 – Waterford

Ms. McCowan and Ms. Smithson provided an overview of the plans and answered questions from Commissioners.

Mr. Shea moved that the plans and cost analyses for D41-a-1 Sterling Heights and D48 Bloomfield be tabled. Judge Fisher seconded the motion. The motion carried.

The plans and cost analyses for D41-a-1 Sterling Heights and D48 Bloomfield will be included for consideration on the Commission's July meeting agenda.

Mr. Eaman moved that the plans and cost analyses for D40 – St. Clair Shores, D41b – Mt. Clemens, D43-2 – Ferndale, D46 – Southfield, D47 – Farmington/Farmington Hills and D51 – Waterford be approved. Judge Fisher seconded. The motion carried.

Staff recommends that the plans and cost analyses for the following systems in the Western Michigan region be approved:

- Branch County
- Cass County
- D59-1 Grandville
- D59-2 – Walker
- D62A – Wyoming
- Ionia County
- Kalamazoo County
- Montcalm County
- St. Joseph County

Judge Fisher moved that the staff recommendation be adopted and that the plans and cost analyses for the systems listed above be approved. Mr. Haveman seconded. The motion carried.

Executive Director Review

Ms. Khogali's annual review will be considered at the July meeting. Chair Puerner will send review materials to Commissioners. Ms. Khogali has requested that the discussion occur in closed session.

Report of Nominating Committee

Judge Boyd stated that the Nominating Committee would meet now that the Commission's vacancies had been filled. In August, the Committee will bring a slate of officers to the Commission for its consideration.

There will be a special meeting of the Commission on July 23, 2019 at 11:00 am in the lower level of the Capitol National Bank Building.

Ms. McAvoy moved that the meeting be adjourned. Mr. Shea seconded the motion. The motion carried.

The meeting adjourned at 4:20 pm.

Respectfully submitted,
Marcela Westrate